

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **200805005**

Release Date: 2/1/2008

Index Number: 2632.01-00; 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04 – PLR-114704-05

Date:

September 17, 2007

Re:

### Legend

Grantor =  
Spouse =  
Trust 1 =

Trust 2 =

Trust 3 =

Accountant =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Child 1 =  
Child 2 =  
Child 3 =  
\$X =  
\$Y =  
Year 1 =

Year 2 =

Dear :

This is in response to correspondence requesting an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an election under section 2632(c)(5) to elect out of the generation-skipping transfer (GST) tax exemption automatic allocation rules.

### Facts

On Date 1, Grantor established Trust 1, an irrevocable trust, for the benefit of Child 1 and her descendants. On Date 2, Grantor and Spouse established Trust 2 and Trust 3, for the benefit of Child 2 and his descendants, and Child 3 and his descendants, respectively. The dispositive provisions of the three trusts are identical except for the designation of the primary beneficiary.

Under the terms of each trust, the net income of the trust is to be accumulated or distributed in the trustees' discretion to or on behalf of the primary beneficiary (Child 1, Child 2 or Child 3 as the case may be) his or her children and the children of any deceased child, for the beneficiary's support, maintenance, education, business and professional ventures, medical expenses and general welfare. The trustees are also authorized, in their discretion, to distribute trust principal to the beneficiaries in the event the income distributions are insufficient for the stated purposes. On the death of the primary beneficiary, the trust is to be divided, per stripes, into separate shares, for the primary beneficiaries issue, and held in further trust.

In Year 1, after December 31, 2000, Grantor and Spouse each transferred stock valued at \$X to each of Trust 1, Trust 2, and Trust 3. In Year 2, Grantor and Spouse each transferred stock valued at \$Y to each of Trust 1, Trust 2, and Trust 3.

It is represented that these transfers were reported on timely filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, filed by Grantor and Spouse for Year 1 and Year 2. It is represented that Grantor and Spouse intended that their respective available GST exemption was not to be allocated to the Year 1 and Year 2 transfers to Trusts 1, Trust 2 and Trust 3. On the Forms 709 filed for Year 1 and Year 2, Grantor and Spouse did not affirmatively allocate any GST exemption with respect to the Year 1 and Year 2 transfers to Trusts 1, 2 and 3. However, the returns as filed did not signify the election under section 2632(c)(5)(A) to have the automatic allocation rules of section 2632(c)(1) not apply to the Year 1 and Year 2 transfers to Trusts 1, 2, and 3. They relied on Accounting Firm to properly prepare the returns.

Grantor and Spouse request an extension of time (as authorized under section 2642(g)(1)(b)(ii) and sections 301.9100-1 and 301.9100-3) to make the election under section 2632(c)(5)(A)(i)(II) to have the automatic allocation rules contained in section

2632(c) not apply to Grantor and Spouse's Year 1 and Year 2 transfers to Trusts 1, 2, and 3.

Section 2601 imposes a tax on every generation-skipping transfer (GST) made by a transferor to a skip person.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under section 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is defined as the excess of 1 over the "applicable fraction." The applicable fraction, as defined in section 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust (or involved in the direct skip), reduced by the sum of certain federal estate tax or state death tax and charitable deductions.

Under section 2631(a), as in effect for the tax years at issue in the present case, for purposes of determining the inclusion ratio, every individual is allowed a GST exemption of \$ 1,000,000 (adjusted for inflation under section 2631(c)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under section 2631(a), once made, shall be irrevocable.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as defined in section 2632(c)(3)(B). Under sections 2632(c)(5)(A)(i)(I) and (II), an individual may elect to have the automatic allocation rule contained section 2632(c)(1) not apply to an indirect skip, or to any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that an election under section 2632(c)(5)(A)(i)(II) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective. Under section 26.2632(b)(2)(iii)(B) of the Generation-skipping Transfer Tax Regulations, in general, to elect out, the transferor must attach a statement (election out statement) to a timely filed Form 709. The election out statement must identify the trust, and specifically must provide that the transferor is electing out of the automatic allocation of GST exemption with respect to the described transfer or transfers.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in section 2642(b)(1) or (2), and an election under section 2632(b)(3) or (c)(5). Section 2642(g)(1)(B) provides that

in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under section 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in sections 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with section 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in section 2642(b)(1) or (b)(2) or an election described in section 2632(b)(3) or (c)(5) under the provisions of section 301.9100-3.

Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based upon the facts submitted and the representations made Trusts 1, 2 and 3 are GST Trusts for purposes of section 2632(c).

Further, we conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, Grantor and Spouse are granted an extension of time of 60 days from the date of this letter to make the election under section 2632(c)(5)(A)(i)(II) that the automatic allocation rules not apply to the transfers to Trusts 1, 2, and 3 in Years 1 and 2.

The elections should be made in the manner described in section 26.2632-1(b)(2)(iii)(B) on Supplemental Forms 709 filed with the Internal Revenue Service

Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Forms 709. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In this regard we note that on the Year 1 and Year 2 Form 709 filed by Grantor and Spouse, Grantor and Spouse reported several transfers in trust that constituted direct skips for purposes of section 2612(c). The returns report that no GST exemption has been allocated to these transfers. However, these transfers did not constitute nontaxable gifts under section 2642(c)(2). Accordingly, we are specifically not ruling or commenting on the amount of unused GST exemption available to Grantor and Spouse.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter

cc: